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5

6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,    } No.: 4:15-CR-06049-EFS-18  
9    } MOTION TO REOPEN; IN THE  
10    } ALTERNATIVE, MOTION TO  
11 Plaintiff,    } WITHDRAW WAIVER OF  
12    } DETENTION HEARING  
13 vs.    } Hearing: 7/15/2017 @ 6:30 p.m.  
14 ALFREDO MAGANA GARIBAY,    } Yakima  
15    } (w/out oral argument)  
16      
17    

18 COMES NOW the defendant, through counsel, and moves to withdraw the  
19 waiver of detention hearing that was made by oral motion to the court on 6/15/17;  
20 or, in the alternative, to reopen the hearing.

21 Under 18 U.S.C. § 3142(f)(2) a detention hearing may be reopened “at any  
22 time before trial,” based upon new information relevant to the issue of the court’s  
23 detention order. In this case, counsel for the defendant incorrectly believed that ICE  
24 could detain and remove an alien involved in a pending criminal case upon his  
25 release. Following the morning hearing on this date, defense counsel attended a  
CLE program at the Yakima Federal Defender’s Office entitled “Fixing Bail:

MOTION TO REOPEN DETENTION HEARING -1

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1 Correcting Reoccurring Misconceptions in Court.” Defense counsel’s  
2 misconception was corrected.  
3

4 No alien can be removed if it would be prejudicial to the United States. 8  
5 CFR § 215.3(g). Removal of any alien involved in a pending criminal case would  
6 be prejudicial to the interests of the United States. 8 CFR § 287.7(a). (A detainer  
7 advises other law enforcement agencies that ICE seeks custody “for the purpose of  
8 arresting and removing the alien.” *U.S. v. Santos-Flores*, 794 F.3d 1088, 1092 (9<sup>th</sup>  
9 Cir. 2015):

10 The government may also exercise its judgment that the public  
11 interest in criminally prosecuting an alien is greater than the public  
12 interest in swiftly removing him. The government may, therefore,  
13 elect to deliver the alien to the United States Attorney's Office for  
14 prosecution, as it did here, instead of removing him immediately  
15 pursuant to 8 U.S.C. § 1231(a)(5). Having made this choice,  
16 however, the government may not use its discretionary power of  
removal to trump a defendant's right to an individualized  
determination under the Bail Reform Act.

17 Id., p. 1092. *U.S. v. Trujillo-Alvarez*, 900 F. Supp. 2d 1167 (D. Or. 2012).  
18

19 The defendant is entitled to a detention hearing with the assistance of  
20 knowledgeable counsel, and requests that the hearing be reopened.  
21

DATED: 6/15/17

22 /S/MICHAEL W. LYNCH  
MICHAEL W. LYNCH, WSBA 6820  
23 Attorney for Defendant  
24

25 MOTION TO REOPEN DETENTION HEARING -2

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## CERTIFICATE OF SERVICE

I hereby certify that on 6/15/17, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: STEPHANIE VAN MARTER, AUSA; and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

N/A

/S/ MICHAEL W. LYNCH  
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MOTION TO REOPEN DETENTION HEARING -3

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